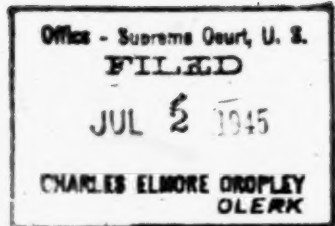


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 187

CHERRY COTTON MILLS, INC.,
Petitioner,

vs.

THE UNITED STATES

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CLAIMS**

THEODORE B. BENSON,
Counsel for Petitioner.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Cherry Cotton Mills, Inc., prays that a writ of certiorari be issued to review the judgment of the Court of Claims of the United States, entered April 2, 1945, against the petitioner and in favor of the Reconstruction Finance Corporation and in favor of the United States on its counterclaim (R. 20-21).

The certified transcript of the record in this case is furnished herewith in accordance with Rule 41 of the Rules of this Court.

The Decision Below

The special findings are printed in the record, pages 9 to 14, the majority opinion, pages 15 to 18. Chief Justice

Whaley dissented but wrote no opinion. The order for the entry of judgments in favor of the Reconstruction Finance Corporation for the tax refund and in favor of the United States on its counterclaim, pages 20-21.

Jurisdiction

The judgment of the Court of Claims was entered April 2, 1945. The jurisdiction of the Court is invoked under the Act of February 13, 1925, c. 229, Section 3, 43 Stat. 939, as amended May 22, 1939, 53 Stat. 752, 28 U. S. C. 288 (b).

The Questions Presented

The questions presented are:

1. Is an indebtedness of the petitioner to the Reconstruction Finance Corporation a debt due the United States which can be set off against an overpayment of processing and floor-stock taxes?
2. Does the Court of Claims have jurisdiction to enter judgment in favor of the Reconstruction Finance Corporation for the amount of the overpayment of the taxes?

The subsidiary or underlying questions are the nature of the Reconstruction Finance Corporation, whether the "body corporate"¹ is a corporation or a "department or establishment"² of the Government, and whether a claim by it is a claim "on the part of the Government of the United States"³ of which the Court of Claims has jurisdiction on the counterclaim of the United States.

¹ The Reconstruction Finance Corporation Act of January 22, 1932, 47 Stat. 5, 15 U. S. C. 601.

² Section 2 of the Budget and Accounting Act as amended April 3, 1939, 53 Stat. 565, 31 U. S. C. 2.

³ Section 145 of the Judicial Code, Act of March 3, 1911, 36 Stat. 1137, 28 U. S. C. 250.

Summary Statement of the Matter Involved

The petitioner is a cotton processor and filed a claim for refund of processing and floor-stocks taxes paid under the unconstitutional Agricultural Adjustment Act. The claim for refund was allowed by the Commissioner of Internal Revenue in the amount of \$3,104.87 and scheduled for credit or refund. A final closing agreement under Section 506 of the Revenue Act of 1936 was accepted and signed by the Acting Commissioner and the petitioner was advised that, unless it was indebted to the United States Government, a check would issue. The treasurer of the United States issued a check, but payment was stopped. The Comptroller General, in his advice of payment of settlement to accompany the check, had certified that a check for the amount should issue in favor of the Reconstruction Finance Corporation in partial liquidation of a debt due the corporation. The Treasurer then issued his check payable to the Reconstruction Finance Corporation, which corporation still has the fund.

The indebtedness arose as the result of the corporation's having purchased partition in a mortgage note made by the petitioner to a national bank, as evidence of a loan made by the bank, which note, secured by the pledge of property other than the tax refund, had not been paid in full and the corporation had under partition with the bank a claim against the petitioner in the amount of \$5,963.51 on the note.

The petitioner sued for the tax refund, the United States filed its counterclaim and the Court of Claims entered judgment for the United States for the excess of the indebtedness to the Reconstruction Finance Corporation over the amount paid to the corporation. The judgment entered is, in effect, that the Reconstruction Finance Corporation take the \$3,104.87 tax refund from the United States and that

the United States take the unpaid balance of its indebtedness from the petitioner to the Reconstruction Finance Corporation.

Specification of Errors

The court below erred:

1

In entering judgment that the Reconstruction Finance Corporation should retain from the Treasury of the United States the amount of the tax refund due the petitioner.

2

In entering judgment for the United States in an amount equal to the unpaid indebtedness of the petitioner to the Reconstruction Finance Corporation.

Reasons for the Allowance of the Writ

In purchasing participation in the note evidencing the loan made by the national bank, the Reconstruction Finance Corporation was not acting "as a financial agent of the Government,"⁴ but in its own name and right. The corporation acted as principal and in such capacity acquired part ownership in the note made by the petitioner. The

⁴ In Section 12 of the Act, 47 Stat. 10, 15 U. S. C. 612, there is the provision that the corporation "may also be employed as a financial agent of the Government," apparently by the Secretary of the Treasury. The corporation was not so employed here but was acting in its own name and as principal and was not employed as an agent. In Section 3 of the Contract Settlement Act of 1944, 58 Stat. 650, 41 U. S. C. 103, the term "contracting agency" is defined to include the Reconstruction Finance Corporation.

While in Section 3 the corporation is made a "contracting agency," in Section 13(b) (2) of the Act, 58 Stat. 660, 41 U. S. C. 113, Congress clearly recognized the distinction between a suit against the United States in the Court of Claims or in a district court, for an amount less than \$10,000, and a suit against the Reconstruction Finance Corporation and provided

petitioner became indebted to the bank and to the corporation, not to the United States. There arose no debt due the United States, or any department or establishment thereof, which the Comptroller General had authority to recover,⁵ nor any claim or demand by the Government of

that "if the contracting agency is the Reconstruction Finance Corporation . . . the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law." The corporation can not be sued in the Court of Claims. Thus has the Congress restated and interpreted the existing law and followed the conclusions of this Court in *Reconstruction Finance Corporation v. J. G. Menihan Corp.*, 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, that, while the corporation is declared to be a governmental agency, it is to sue and be sued as a private corporation.

Under this most recent provision, the corporation is to be sued as a private corporation, whether or not acting as an agency of the United States.

⁵ The Commissioner of Internal Revenue determined the tax refund and payment was diverted to the Reconstruction Finance Corporation by the Comptroller General, whose office was created by the Budget and Accounting Act of 1921, 42 Stat. 23, 31 U. S. C. 41, with power to settle and adjust:

All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor
 . . . (42 Stat. 24, 31 U. S. C. 71).

In Section 304 of the Act, 42 Stat. 24, 31 U. S. C. 93, there is the provision that:

The General Accounting Office shall superintend the recovery of all debts finally certified by it to be due to the United States.

In the Federal Loan Agency Administration Act of February 24, 1945, 79th Cong., 1st Session, Pub. No. 4, Section 5(a), there is the provision that:

The financial transactions of all Government corporations shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States.

the United States within the jurisdiction of the Court of Claims.⁶

The Comptroller General, in certifying in his advice of settlement that the check for the tax refund should issue to the Reconstruction Finance Corporation, has assumed to exercise an authority not conferred on him by the Congress and never previously attempted by him. If the Comptroller General had authority to direct that a debt due the Reconstruction Finance Corporation should be paid by the application of a debt due the petitioner by the United States, then he can extend his authority to the collection of debts due all Government owned corporations and apply accounts and debts of the one against the other. This would lead merely to confusion. The Reconstruction Finance Corporation now does not know how to record and account for the \$3,104.87 paid to it by the Treasury Department from an appropriation for the purpose of making tax refunds.

The rights of all persons having claims against the United States, for tax refunds or other causes, who may have had dealings with governmental corporations will be affected by the newly assumed authority of the Comptroller General.

The petitioner submits that this Court should decide what authority the Comptroller General has to direct the collection of the debts due governmental corporations and what authority he has to apply the amount of a debt due

⁶ Section 145 of the Judicial Code provides:

The Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims . . . against the United States . . .

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: . . . (36 Stat. 1136, 7, 28 U. S. C. 250).

by the United States to a claimant to a debt due by the claimant to a Government owned corporation, or it may be the other way around. The question here presented is one of first impression and is certainly one of great importance and of great interest to the various governmental corporations and agencies. From inquiries received in connection with the pending case, counsel believes that he can state that they need the decision of this Court for their guidance. In *Keifer and Keifer v. Reconstruction Finance Corporation*, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784, Mr. Justice Frankfurter stated that there are forty such corporations recently created.

The petitioner sued the United States for the tax overpayment. The United States filed its counterclaim and set up the indebtedness of the petitioner to the Reconstruction Finance Corporation. That corporation was not a party to the suit. The Court of Claims approved the action of the Comptroller General in applying the tax refund to the indebtedness of the petitioner to the Reconstruction Finance Corporation and, in fact, rendered judgment in favor of the corporation in the amount of \$3,104.87 and gave the United States judgment for the balance of the indebtedness of the petitioner to the corporation. The judgment entered by the Court of Claims gives rise to serious questions, both as to its jurisdiction and as to the proper parties, and for that reason should be reviewed by this Court.

The court below exceeded its jurisdiction in entertaining the counterclaim. Under Section 145 of the Judicial Code, in suits against the United States, the jurisdiction of the Court of Claims is limited to the hearing and determining of counterclaims or other demands "on the part of the Government of the United States". 36 Stat. 1137, 28 U. S. C. 250 (2). There is here no claim on the part of the United States, but on the part of the Reconstruction Finance Cor-

poration, a body corporate, with power to sue and be sued in its own name and right. The decision below is in direct conflict with that of this Court in *Reconstruction Finance Corporation v. J. G. Menihan Corp.*, 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, holding that the Reconstruction Finance Corporation, itself, has power "to sue and be sued," and citing *Keifer and Keifer v. Reconstruction Finance Corporation*, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784. The Reconstruction Finance Corporation was created by the Reconstruction Finance Corporation Act of January 22, 1932, Section 1, 47 Stat. 5, 15 U. S. C. 601, which, as of importance, provided:

There is hereby created a body corporate with the name 'Reconstruction Finance Corporation' * * *.

If the Reconstruction Finance Corporation can sue in the proper Federal or state court and is the proper party to recover debts due it, then the United States is not the proper party and the court below should not have entertained the counterclaim. The court below erred in entering judgment in favor of the Reconstruction Finance Corporation. While the corporation may sue in the proper Federal or state court, it can, of course, not sue in the Court of Claims. The judgment of the court below is contrary to the statute.

This Court has held in a number of cases that the Reconstruction Finance Corporation, while it acts as a governmental agency in performing its functions, its transactions are akin to those of a private enterprise, with the power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal," and that in suing and being sued the corporation is subject to the ordinary, natural and appropriate incidents of litigation as is a private party in similar circumstances. See the opinion by Chief Justice Hughes, in *Reconstruction*

Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81, 61 S. Ct. 485, 85 L. Ed. 595, citing *Pittman v. Home Owners Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, 124 A. L. R. 1263; *Sloan Shipyards v. United States Fleet Corporation*, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762; *Keifer and Keifer v. Reconstruction Finance Corporation*, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784. The most recent decision of this Court on the question involved is the *Brady v. Roosevelt Steamship Co.* case, 317 U. S. 575, 63 S. Ct. 425, 87 L. Ed. 471, approving the *Keifer and Keifer* case.

The holding of the court below is in direct conflict with the decision of this Court in the *Sloan Shipyards* case. There the contention was made and the District Court did hold, 268 Fed. 624, that the United States Shipping Board Emergency Fleet Corporation, incorporated pursuant to act of Congress under the laws of the District of Columbia, is merely an instrumentality created by the United States, acting in its sovereign capacity for executing the purposes of the Shipping Board Act, and that a suit against it is a suit against the United States, not maintainable in a District Court where the amount involved exceeds \$10,000. On appeal, the District Court was reversed, 258 U. S. 549, 42 S. Ct. 386, 66 L. Ed. 762, this Court finding:

The Shipping Act contemplated a corporation in which private persons might be stockholders and which was to be formed like any business corporation under the laws of the District, with capacity to sue and be sued. The United States took all the stock, but that did not affect the legal position of the company.

The decision below is also in conflict with that of this Court in *U. S. ex rel. Skinner and Eddy Corp. v. McCarl*, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 131.

This Court held in *Sloan Shipyards* that the Fleet Corporation could be sued in the district court, not sitting as

the Court of Claims, as a private corporation. The Reconstruction Finance Corporation had, and in fact still has, the right to sue the petitioner for the full amount of the petitioner's indebtedness to it, regardless of any decision by the Court of Claims in a suit to which it was not a party. The Court of Claims has clearly exceeded its jurisdiction in entering judgment in favor of the Reconstruction Finance Corporation.

Conclusion

The decision below was by a mere majority, four Judges sitting and the Chief Justice dissenting without opinion.

The petitioner submits that the several questions here presented, the extent of the authority of the Comptroller General, the jurisdiction of the Court of Claims and the proper party to sue or be sued, are each of public importance and concern the meaning of recent acts of the Congress, and not having heretofore been directly before this Court should be considered and passed on by this Court and that for that purpose, the petitioner prays that its application be granted.

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